

KENNETH R. O'ROURKE (S.B. #120144)
korourke@omm.com

STEVEN H. BERGMAN (S.B. #180542)
sbergman@omm.com

O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

MICHAEL F. TUBACH (S.B. #145955)
mtubach@omm.com

KATHERINE M. ROBISON (S.B. #221556)
krobison@omm.com

O'MELVENY & MYERS LLP
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111-3305
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Defendants
HYNIX SEMICONDUCTOR INC. and
HYNIX SEMICONDUCTOR AMERICA INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
LITIGATION

STATE OF NEW YORK,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., et al.,

Defendants.

MDL No. 1486
Case No. M-02-01486 PJH (JCS)

Case Nos:
C-06-06436 PJH (JCS) (N.D. Cal.)
06-CV-5309 (S.D.N.Y.)

Assigned for all purposes to the
Hon. Phyllis J. Hamilton

**AMENDED ANSWER OF
DEFENDANTS HYNIX
SEMICONDUCTOR INC. AND
HYNIX SEMICONDUCTOR
AMERICA INC. TO PLAINTIFF'S
AMENDED COMPLAINT**

Trial by Jury Demanded

AMENDED ANSWER TO THE AMENDED COMPLAINT

Defendants Hynix Semiconductor Inc. (“HSI”) and Hynix Semiconductor America Inc. (“HSA”) (collectively “Hynix”) respectfully submit this Amended Answer to the Amended Complaint (“Complaint”) of Plaintiff State of New York.

Except as specifically admitted below, Hynix generally denies the allegations of the Amended Complaint directed at Hynix and Hynix specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled to any relief.

Hynix denies all allegations contained in section headings or other portions of the Complaint that are not contained within the specifically numbered paragraphs of the Complaint. Unless specifically noted otherwise, Hynix lacks knowledge or information sufficient to admit or deny the truth of allegations concerning persons other than Hynix. To the extent the Complaint contains allegations concerning other persons, Hynix denies that they support any claim for relief against Hynix. Hynix objects to responding to any legal conclusions contained within the Complaint.

INTRODUCTION

1. Hynix admits that DRAM is a type of memory that is used in certain electronic products. Except as so admitted, to the extent that the allegations in Paragraph 1 are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 1 of the Complaint, and on this basis denies those allegations.

2. To the extent that the allegations in Paragraph 2 of the Complaint are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 2, and on this basis denies those allegations.

3. To the extent that the allegations in Paragraph 3 of the Complaint are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information

1 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 3,
2 and on this basis denies those allegations.

3 4. Hynix admits that, pursuant to plea agreements with the government, Hynix
4 Semiconductor Inc. and Hynix employees D.S. Kim, C.K. Chung, K.C. Suh and C.Y.
5 Choi each pled guilty to a one-count information and avers that the plea agreements speak
6 for themselves. Hynix admits on information and belief that Infineon Technology AG,
7 Eplida Memory Inc., Samsung Semiconductor, Inc. and certain other individuals pled
8 guilty to certain charges. Hynix also admits on information and belief that Micron agreed
9 to cooperate with federal investigators. Except as so expressly admitted, Hynix lacks
10 knowledge or information sufficient to form a belief as to the truth of the allegations
11 contained in Paragraph 4 of the Complaint, and on this basis denies the allegations.

12 5. Paragraph 5 of the Complaint states legal conclusions and Plaintiff's
13 characterization of this action, to which no response is required. To the extent that
14 Paragraph 5 may be deemed to require a response and to the extent that the allegations in
15 Paragraph 5 are directed to Hynix, Hynix denies those allegations. Hynix specifically
16 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
17 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
18 information sufficient to form a belief as to the truth of all other allegations contained in
19 Paragraph 5, and on this basis denies those allegations.

20 21 **JURISDICTION AND VENUE**

22 6. Paragraph 6 of the Complaint consists of legal conclusions and Plaintiff's
23 characterization of this action, to which no response is required. To the extent a response
24 is required and the allegations contained in Paragraph 6 are directed to Hynix, Hynix
25 denies those allegations. Hynix specifically denies that Plaintiff or any person or entity
26 that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled
27 to any relief. Hynix lacks knowledge or information sufficient to form a belief as to the
28

1 truth of all other allegations contained in Paragraph 6, and on this basis denies those
2 allegations.

3 7. Paragraph 7 of the Complaint consists of legal conclusions and Plaintiff's
4 characterization of this action, to which no response is required. To the extent that
5 Paragraph 7 is deemed to require a response, Hynix denies those allegations.

6 8. Paragraph 8 of the Complaint consists of legal conclusions, to which no
7 response is required. To the extent that Paragraph 8 is deemed to require a response,
8 Hynix denies those allegations.

9 9. Paragraph 9 of the Complaint consists of legal conclusions and Plaintiff's
10 characterization of this action, to which no response is required. To the extent a response
11 is required and the allegations contained in Paragraph 9 are directed at Hynix, Hynix
12 admits that HSA had DRAM sales to customers in this District and in New York and that
13 HSA has offices in this District and in New York. Except as so expressly admitted, to the
14 extent the allegations in Paragraph 9 are directed at Hynix, Hynix denies those allegations.
15 Hynix lacks knowledge or information sufficient to form a belief as to the truth of all
16 other allegations contained in Paragraph 9, and on this basis denies those allegations.

17 18 **THE PARTIES**

19 **Plaintiff**

20 10. Paragraph 10 of the Complaint consists of legal conclusions and Plaintiff's
21 characterization of this action, to which no response is required. To the extent a response
22 is required and the allegations contained in Paragraph 10 are directed to Hynix, Hynix
23 denies those allegations. Hynix specifically denies that Plaintiff or any person or entity
24 that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled
25 to any relief. Hynix lacks knowledge or information sufficient to form a belief as to the
26 truth of all other allegations contained in Paragraph 10, and on this basis denies those
27 allegations.

Defendants

11. Hynix admits on information and belief that Micron Technology, Inc. is a Delaware corporation with its principal place of business in Idaho. Except as so expressly admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 11 of the Complaint, and on this basis denies those allegations.

12. Hynix admits on information and belief that Micron Semiconductor Products, Inc. has its principal place of business in Idaho. Except as so expressly admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 12 of the Complaint, and on this basis denies those allegations.

13. Hynix admits on information and belief that Infineon Technologies AG is incorporated in and has its principal place of business in the Federal Republic of Germany. Except as so expressly admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 13 of the Complaint, and on this basis denies those allegations.

14. Hynix admits on information and belief that Infineon Technologies North America Corp. has its principal place of business in California. Except as so expressly admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 14 of the Complaint, and on this basis denies those allegations.

15. Hynix admits that HSI is a South Korean corporation with its principal place of business in South Korea, that HSI maintains a facility at the address listed in Paragraph 15 of the Complaint, that HSI manufactured and sold DRAM, and that HSI sold DRAM to HSA in the United States. Except as so expressly admitted, Hynix denies the allegations in Paragraph 15.

16. Hynix admits that HSA is a subsidiary of HSI, that HSA has its principal place of business in California, that HSA maintains a facility at the address listed in

1 Paragraph 16 of the Complaint, and that HSA sold DRAM to customers in the United
2 States. Except as so expressly admitted, Hynix denies the allegations in Paragraph 16.

3 17. Hynix admits on information and belief that Samsung Electronics Co. Ltd.
4 is incorporated in and has its principal place of business in the Republic of Korea. Except
5 as so expressly admitted, Hynix lacks knowledge or information sufficient to form a belief
6 as to the truth of all other allegations contained in Paragraph 17 of the Complaint, and on
7 this basis denies those allegations.

8 18. Hynix admits on information and belief that Samsung Semiconductor, Inc.
9 has its principal place of business in California. Except as so expressly admitted, Hynix
10 lacks knowledge or information sufficient to form a belief as to the truth of all other
11 allegations contained in Paragraph 18 of the Complaint, and on this basis denies those
12 allegations.

13 19. Hynix admits on information and belief that Mosel Vitelic, Corp. is
14 incorporated in and has its principal place of business in Taiwan. Except as so expressly
15 admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth
16 of all other allegations contained in Paragraph 19 of the Complaint, and on this basis
17 denies those allegations.

18 20. Hynix admits on information and belief that Mosel Vitelic Corporation has
19 its principal place of business in California. Except as so expressly admitted, Hynix lacks
20 knowledge or information sufficient to form a belief as to the truth of all other allegations
21 contained in Paragraph 20 of the Complaint, and on this basis denies those allegations.

22 21. Hynix admits on information and belief that Nanya Technology Corp. is
23 incorporated in and has its principal place of business in Taiwan. Except as so expressly
24 admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth
25 of all other allegations contained in Paragraph 21 of the Complaint, and on this basis
26 denies those allegations.

27 22. Hynix admits on information and belief that Nanya Technology Corp. USA
28 has its principal place of business in California. Except as so expressly admitted, Hynix

1 lacks knowledge or information sufficient to form a belief as to the truth of all other
2 allegations contained in Paragraph 22 of the Complaint, and on this basis denies those
3 allegations.

4 23. Hynix admits on information and belief that Elpida Memory, Inc. is
5 incorporated in and has its principal place of business in Japan. Except as so expressly
6 admitted, Hynix lacks knowledge or information sufficient to form a belief as to the truth
7 of all other allegations contained in Paragraph 23 of the Complaint, and on this basis
8 denies those allegations.

9 24. Hynix admits on information and belief that Elpida Memory (USA), Inc. has
10 its principal place of business in California. Except as so expressly admitted, Hynix lacks
11 knowledge or information sufficient to form a belief as to the truth of all other allegations
12 contained in Paragraph 24 of the Complaint, and on this basis denies those allegations.

13 25. Hynix admits on information and belief that NEC Electronics America, Inc.
14 has its principal place of business in California. Except as so expressly admitted, Hynix
15 lacks knowledge or information sufficient to form a belief as to the truth of all other
16 allegations contained in Paragraph 25 of the Complaint, and on this basis denies those
17 allegations.

18 19 **The Conspiracy and Co-Conspirators**

20 26. To the extent that the allegations in Paragraph 26 of the Complaint are
21 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
22 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 26,
23 and on this basis denies those allegations.

24 27. Paragraph 27 of the Complaint states legal conclusions, to which no
25 response is required. To the extent Paragraph 27 requires a response and the allegations
26 are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or
27 information sufficient to form a belief as to the truth of all other allegations contained in
28 Paragraph 27, and on this basis denies those allegations.

1 28. To the extent that the allegations in Paragraph 28 of the Complaint are
2 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
3 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 28,
4 and on this basis denies those allegations.

5
6 **INTERSTATE COMMERCE**

7 29. Hynix admits that HSA sold DRAM in the United States and admits that
8 HSI manufactured DRAM and sold DRAM to HSA in the United States. Paragraph 29 of
9 the Complaint consists of legal conclusions and Plaintiff's characterization of this action,
10 to which no response is required. To the extent that the allegations in Paragraph 29 are
11 directed to Hynix, Hynix denies those allegations. Except as so expressly admitted or
12 denied, Hynix lacks knowledge or information sufficient to form a belief as to the truth of
13 all other allegations contained in Paragraph 29, and on this basis denies those allegations.

14
15 **DRAM: THE PRICE FIXED PRODUCT**

16 **The Product And Its Functions**

17 30. Hynix admits that DRAM are high-speed memory chips, that DRAM is used
18 in a wide variety of computing and other electronic devices and that DRAM chips are
19 manufactured on silicon wafers. Except as so expressly admitted, Hynix lacks knowledge
20 or information sufficient to form a belief as to the truth of all other allegations contained
21 in Paragraph 30 of the Complaint, and on this basis denies those allegations.

22 31. Hynix admits that "Random Access Memory" can be accessed directly from
23 any part of the memory. Hynix lacks knowledge or information sufficient to form a
24 belief as to the truth of all other allegations contained in Paragraph 31 of the Complaint,
25 and on this basis denies those allegations.

26 32. Paragraph 32 of the Complaint consists of Plaintiff's characterization of this
27 action, to which no response is required. To the extent a response from Hynix is required,
28

1 Hynix lacks knowledge or information sufficient to form a belief as to the truth of all
2 other allegations contained in Paragraph 32, and on this basis denies those allegations.

3 33. Paragraph 33 of the Complaint consists of Plaintiff's characterization of this
4 action, to which no response is required. To the extent a response from Hynix is required,
5 Hynix admits that a "bit" is a unit of measurement for DRAM and that a "byte" consists
6 of eight bits. Hynix lacks knowledge or information sufficient to form a belief as to the
7 truth of all other allegations contained in Paragraph 33, and on this basis denies those
8 allegations.

9 34. Hynix lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in Paragraph 34 of the Complaint, and on this basis
11 denies those allegations.

12 35. To the extent the allegations of Paragraph 34 of the Complaint are directed
13 at Hynix, Hynix admits that DRAM is a product that multiple firms manufacture and
14 which can be interchangeable at times and otherwise denies those allegations. Hynix
15 lacks knowledge or information sufficient to form a belief as to the truth of all other
16 allegations contained in Paragraph 35 of the Complaint, and on this basis denies those
17 allegations.

18 36. To the extent that allegations in Paragraph 36 of the Complaint are directed
19 to Hynix, Hynix admits that DRAM is manufactured at fabs and that in 1999 Hynix
20 acquired LG Semicon and otherwise Hynix denies those allegations. Hynix lacks
21 knowledge or information sufficient to form a belief as to the truth of all other allegations
22 contained in Paragraph 36 of the Complaint, and on this basis denies those allegations.

23 37. To the extent that the allegations in Paragraph 37 of the Complaint are
24 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
25 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 37,
26 and on this basis denies those allegations.

Major DRAM Purchasers: Computer OEMs

38. To the extent that the allegations in Paragraph 38 of the Complaint are directed to Hynix, Hynix admits that it sold DRAM to Dell, Hewlett-Packard, Compaq, IBM, Apple and Gateway and that DRAM is used in personal computers and otherwise denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 38, and on this basis denies those allegations.

39. To the extent that the allegations in Paragraph 39 of the Complaint are directed to Hynix, Hynix admits that it sold DRAM modules to Dell, Hewlett-Packard, Compaq, IBM, Apple Computer and Gateway, that it had agreements with certain of these OEMs and that certain of these OEMs tested and qualified Hynix DRAM and otherwise denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and on this basis denies those allegations.

40. To the extent that the allegations in Paragraph 40 of the Complaint are directed to Hynix, Hynix admits that it negotiated DRAM price and quantity with Dell, Hewlett-Packard, Compaq, IBM, Apple Computer and Gateway and otherwise denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 40, and on this basis denies those allegations.

41. To the extent that the allegations in Paragraph 41 of the Complaint are directed to Hynix, Hynix admits that it negotiated DRAM price and quantity with Dell, Hewlett-Packard, Compaq, IBM, Apple Computer and Gateway and otherwise denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 41, and on this basis denies those allegations.

42. To the extent that the allegations in Paragraph 42 of the Complaint are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information

1 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 42,
2 and on this basis denies those allegations.

3 **The Conspiracy Forms And Increases Prices**

4 43. To the extent that the allegations in Paragraph 43 of the Complaint are
5 directed to Hynix, Hynix identified employees with competitor contacts relating to pricing
6 or the DRAM market in general in Hynix Semiconductor Inc.'s and Hynix Semiconductor
7 American Inc.'s Supplemental Response to Plaintiff's Second Set of Interrogatories,
8 served on March 6, 2008 in *State of California v. Infineon Tech., et al.*, Case No. C-06-
9 4333 PJH (N.D. Cal.), which speaks for itself. Hynix otherwise denies the allegations of
10 Paragraph 43 that are directed to Hynix. Hynix lacks knowledge or information sufficient
11 to form a belief as to the truth of all other allegations contained in Paragraph 43, and on
12 this basis denies those allegations.

13 44. To the extent the allegations in Paragraph 44 are directed to Hynix, Hynix
14 admits that it identified employees with competitor contacts relating to pricing or the
15 DRAM market in general in Hynix Semiconductor Inc.'s and Hynix Semiconductor
16 America Inc.'s Supplemental Response to the Plaintiff's Second Set of Interrogatories,
17 served on March 6, 2008 in the case of *State of California v. Infineon Technologies*, C 06-
18 4333, which speaks for itself. Except as so expressly admitted, Hynix lacks knowledge or
19 information sufficient to form a belief as to the truth of all other allegations contained in
20 Paragraph 44, and on this basis denies those allegations.

21 45. Hynix admits that Paul Palonsky provided sworn testimony in a May 9,
22 2006 deposition, which speaks for itself, and further admits that Paul Palonsky was
23 employed by Hynix, but Hynix denies that the transcript of Paul Palonsky's deposition
24 contains the language quoted in Paragraph 45 of the Complaint. Except as so expressly
25 admitted, to the extent that the allegations contained in Paragraph 45 are directed to
26 Hynix, Hynix denies those allegations. Hynix lacks knowledge or information sufficient
27 to form a belief as to the truth of all other allegations in Paragraph 45, and on this basis
28 denies those allegations.

1 46. Hynix admits that Paul Palonsky provided sworn testimony in a May 9,
2 2006 deposition, which speaks for itself, and further admits that Paul Palonsky was
3 employed by Hynix. Except as so expressly admitted, to the extent that the allegations
4 contained in Paragraph 46 of the Complaint are directed to Hynix, Hynix denies those
5 allegations. Hynix lacks knowledge or information sufficient to form a belief as to the
6 truth of all other allegations in Paragraph 46, and on this basis denies those allegations.

7 47. Hynix admits that Paul Palonsky was employed by Hynix and that Paul
8 Palonsky testified in a May 9, 2006 deposition that he spoke to Keith Weinstock, which
9 testimony speaks for itself. Except as so expressly admitted, to the extent that the
10 allegations contained in Paragraph 47 of the Complaint are directed to Hynix, Hynix
11 denies those allegations. Hynix lacks knowledge or information sufficient to form a belief
12 as to the truth of all other allegations in Paragraph 47, and on this basis denies those
13 allegations.

14 48. Hynix admits that C.K. Chung and Paul Palonsky were employed by Hynix,
15 and that Paul Palonsky was a subordinate to C.K. Chung. Hynix also admits that C.K.
16 Chung testified in a July 27, 2006 deposition that he discussed pricing information with
17 others at Hynix and that he contacted certain competitors about pricing, which testimony
18 speaks for itself. Except as so expressly admitted, to the extent that the allegations
19 contained in Paragraph 48 of the Complaint are directed to Hynix, Hynix denies those
20 allegations. Hynix lacks knowledge or information sufficient to form a belief as to the
21 truth of all other allegations in Paragraph 48, and on this basis denies those allegations.

22 49. Hynix admits that C.K. Chung testified in a July 27, 2006 deposition that he
23 discussed pricing information with others at Hynix and that he contacted certain
24 competitors about pricing, which testimony speaks for itself. Except as so expressly
25 admitted, to the extent that the allegations contained in Paragraph 49 of the Complaint are
26 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
27 sufficient to form a belief as to the truth of all other allegations in Paragraph 49, and on
28 this basis denies those allegations.

1 50. Hynix admits to the existence of a March 2001 email that contains the
2 language quoted in Paragraph 50 of the Complaint, which email speaks for itself. Except
3 as so expressly admitted, Hynix denies the allegations.

4 51. Hynix admits to the existence of a March 2001 email that contains the
5 language quoted in Paragraph 51 of the Complaint, which email speaks for itself, except
6 Hynix denies that “[Samsung]” appears in that email. Except as so expressly admitted, to
7 the extent that the allegations in Paragraph 51 are directed to Hynix, Hynix denies the
8 allegations. Hynix lacks knowledge or information sufficient to form a belief as to the
9 truth of all other allegations in Paragraph 51, and on this basis denies those allegations.

10 52. To the extent that the allegations in Paragraph 52 of the Complaint are
11 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
12 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 52,
13 and on this basis denies those allegations.

14 53. To the extent that the allegations in Paragraph 53 of the Complaint are
15 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
16 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 53,
17 and on this basis denies those allegations.

18 54. To the extent that the allegations in Paragraph 54 of the Complaint are
19 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
20 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 54,
21 and on this basis denies those allegations.

22 55. To the extent that the allegations in Paragraph 55 of the Complaint are
23 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
24 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 55,
25 and on this basis denies those allegations.

26 56. To the extent that the allegations in Paragraph 56 of the Complaint are
27 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
28

1 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 56,
2 and on this basis denies those allegations.

3 57. To the extent that the allegations in Paragraph 57 of the Complaint are
4 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
5 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 57,
6 and on this basis denies those allegations.

7 58. To the extent that the allegations in Paragraph 58 of the Complaint are
8 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
9 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 58,
10 and on this basis denies those allegations.

11 59. To the extent that the allegations in Paragraph 59 of the Complaint are
12 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
13 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 59,
14 and on this basis denies those allegations.

15 60. To the extent that the allegations in Paragraph 60 of the Complaint are
16 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
17 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 60,
18 and on this basis denies those allegations.

19 61. To the extent that the allegations in Paragraph 61 of the Complaint are
20 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
21 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 61,
22 and on this basis denies those allegations.

23 62. To the extent that the allegations in Paragraph 62 of the Complaint are
24 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
25 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 62,
26 and on this basis denies those allegations.

27 63. To the extent that the allegations in Paragraph 63 of the Complaint are
28 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information

1 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 63,
2 and on this basis denies those allegations.

3 64. Hynix admits that, pursuant to a government plea agreement, Hynix
4 Semiconductor Inc. has pled guilty to a one-count information and avers that the plea
5 agreement speaks for itself. Hynix admits on information and belief that Infineon
6 Technology AG, Elpida Memory Inc. and Samsung Semiconductor, Inc. pled guilty to
7 certain charges. Except as so expressly admitted, Hynix lacks knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of
9 the Complaint, and on this basis denies the allegations.

10 65. Hynix admits to the existence of a transcript of the November 30, 2005
11 sentencing hearing in *United States v. Samsung Electronics Co., Ltd., et al.*, N. D. Ca.,
12 No. CR-05-0634 PJH, which document speaks for itself. Except as so expressly admitted,
13 Hynix lacks knowledge and information sufficient to form a belief as to the truth of the
14 allegations contained in Paragraph 65 of the Complaint, and on this basis denies those
15 allegations.

16 66. Hynix admits to the existence of a transcript of the May 11, 2005 sentencing
17 hearing in *United States v. Hynix Semiconductor, Inc.*, N. D. Ca., No. CR 05-249 (PJH),
18 which document speaks for itself. Except as so expressly admitted, Hynix lacks
19 knowledge and information sufficient to form a belief as to the truth of the allegations
20 contained in Paragraph 66 of the Complaint, and on this basis denies those allegations.

21 67. Hynix admits to the existence of a transcript of the October 20, 2004
22 sentencing hearing in *United States v. Infineon Technologies AG*, N. D. Ca., No. CR-04-
23 0299 PJH, which document speaks for itself. Except as so expressly admitted, Hynix
24 lacks knowledge and information sufficient to form a belief as to the truth of the
25 allegations contained in Paragraph 67 of the Complaint, and on this basis denies those
26 allegations.

27 68. Hynix admits on information and belief that Micron agreed to cooperate
28 with federal investigators. Except as so expressly admitted, Hynix lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in
2 Paragraph 68 of the Complaint, and on this basis denies the allegations.

3
4 **FRAUDULENT CONCEALMENT AND TOLLING**

5 69. To the extent that the allegations in Paragraph 69 of the Complaint are
6 directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information
7 sufficient to form a belief as to the truth of all other allegations contained in Paragraph 69,
8 and on this basis denies those allegations.

9 70. To the extent that the allegations in Paragraph 70 of the Complaint are
10 directed to Hynix, Hynix denies those allegations. Hynix specifically denies that Plaintiff
11 was injured by Hynix or at all or is entitled to any relief. Hynix lacks knowledge or
12 information sufficient to form a belief as to the truth of all other allegations contained in
13 Paragraph 70, and on this basis denies those allegations.

14 71. To the extent that the allegations in Paragraph 71 of the Complaint are
15 directed to Hynix, Hynix denies those allegations. Hynix specifically denies that Plaintiff
16 was injured by Hynix or at all or is entitled to any relief. Hynix lacks knowledge or
17 information sufficient to form a belief as to the truth of all other allegations contained in
18 Paragraph 71, and on this basis denies those allegations.

19
20 **THE ASSIGNMENT OF DIRECT CLAIMS TO THE STATE**

21 72. Hynix lacks knowledge or information sufficient to form a belief as to the
22 truth of all other allegations contained in Paragraph 72 of the Complaint, and on this basis
23 denies those allegations.

24 73. Hynix lacks knowledge or information sufficient to form a belief as to the
25 truth of all other allegations contained in Paragraph 73 of the Complaint, and on this basis
26 denies those allegations.

1 74. Hynix lacks knowledge or information sufficient to form a belief as to the
2 truth of all other allegations contained in Paragraph 74 of the Complaint, and on this basis
3 denies those allegations.

4 75. Hynix lacks knowledge or information sufficient to form a belief as to the
5 truth of all allegations contained in Paragraph 75 of the Complaint, and on this basis
6 denies those allegations.

7 76. Hynix lacks knowledge or information sufficient to form a belief as to the
8 truth of all allegations contained in Paragraph 76 of the Complaint, and on this basis
9 denies those allegations.

10 77. Hynix lacks knowledge or information sufficient to form a belief as to the
11 truth of all allegations contained in Paragraph 77 of the Complaint, and on this basis
12 denies those allegations.

13 78. Hynix lacks knowledge or information sufficient to form a belief as to the
14 truth of all allegations contained in Paragraph 78 of the Complaint, and on this basis
15 denies those allegations.

16 79. Hynix lacks knowledge or information sufficient to form a belief as to the
17 truth of all other allegations contained in Paragraph 79 of the Complaint, and on this basis
18 denies those allegations.

19 80. Paragraph 80 of the Complaint states legal conclusions and Plaintiff's
20 characterization of this action, to which no response is required. To the extent that
21 Paragraph 80 may be deemed to require a response and to the extent that the allegations in
22 Paragraph 80 are directed to Hynix, Hynix denies those allegations. Hynix specifically
23 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
24 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
25 information sufficient to form a belief as to the truth of all other allegations contained in
26 Paragraph 80, and on this basis denies those allegations.

CLAIMS FOR RELIEF***First Claim (Violation of Section 1 of the Sherman Act)***

81. To the extent that the allegations in Paragraph 81 of the Complaint are directed to Hynix, Hynix denies those allegations and specifically denies that it violated Section 1 of the Sherman Act, 15 U.S.C. § 1. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 81, and on this basis denies those allegations.

82. To the extent that the allegations contained in Paragraph 82 of the Complaint are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 82, and on this basis denies those allegations.

83. To the extent that the allegations in Paragraph 83 of the Complaint and all subparts are directed to Hynix, Hynix denies the allegations and Hynix specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 83, including all subparts, and on this basis denies those allegations.

84. To the extent that the allegations in Paragraph 84 of the Complaint are directed to Hynix, Hynix denies those allegations and specifically denies that it violated Section 1 of the Sherman Act, 15 U.S.C. § 1. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 84, and on this basis denies those allegations.

85. To the extent that the allegations in Paragraph 8 of the Complaint are directed to Hynix, Hynix denies the allegations and Hynix specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 85, and on this basis denies those allegations.

1 86. Paragraph 86 of the Complaint states legal conclusions and Plaintiff's
 2 characterization of this action, to which no response is required. To the extent that
 3 Paragraph 86 may be deemed to require a response and to the extent that the allegations in
 4 Paragraph 86 are directed to Hynix, Hynix denies those allegations. Hynix specifically
 5 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
 6 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
 7 information sufficient to form a belief as to the truth of all other allegations contained in
 8 Paragraph 86, and on this basis denies those allegations.

9
 10 ***Second Claim (Violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

11 87. To the extent that the allegations in Paragraph 87 of the Complaint are
 12 directed to Hynix, Hynix denies those allegations and specifically denies that it violated
 13 the Donnelly Act, N.Y. Gen. Bus. L. § 340 *et seq.* Hynix lacks knowledge or information
 14 sufficient to form a belief as to the truth of all other allegations in Paragraph 87, and on
 15 this basis denies those allegations.

16 88. To the extent that the allegations contained in Paragraph 88 of the
 17 Complaint are directed to Hynix, Hynix denies those allegations and Hynix specifically
 18 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
 19 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
 20 information sufficient to form a belief as to the truth of all other allegations in Paragraph
 21 88, and on this basis denies those allegations.

22 89. To the extent that the allegations in Paragraph 89 of the Complaint and all
 23 subparts are directed to Hynix, Hynix denies the allegations and Hynix specifically denies
 24 that Plaintiff or any person or entity that Plaintiff purports to represent was injured by
 25 Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
 26 information sufficient to form a belief as to the truth of all other allegations in Paragraph
 27 89, including all subparts, and on this basis denies those allegations.

1 90. To the extent that the allegations in Paragraph 90 of the Complaint are
2 directed to Hynix, Hynix denies those allegations and specifically denies that it violated
3 the Donnelly Act, N.Y. Gen. Bus. L. § 340 *et seq.* Hynix lacks knowledge or information
4 sufficient to form a belief as to the truth of all other allegations in Paragraph 90, and on
5 this basis denies those allegations.

6 91. To the extent that the allegations in Paragraph 91 of the Complaint are
7 directed to Hynix, Hynix denies the allegations and Hynix specifically denies that Plaintiff
8 or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or
9 that Plaintiff is entitled to any relief. Hynix lacks knowledge or information sufficient to
10 form a belief as to the truth of all other allegations in Paragraph 91, and on this basis
11 denies those allegations.

12 92. Paragraph 92 of the Complaint states legal conclusions and Plaintiff's
13 characterization of this action, to which no response is required. To the extent that
14 Paragraph 92 may be deemed to require a response and to the extent that the allegations in
15 Paragraph 92 are directed to Hynix, Hynix denies those allegations. Hynix specifically
16 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
17 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
18 information sufficient to form a belief as to the truth of all other allegations contained in
19 Paragraph 92, and on this basis denies those allegations.

20 93. Paragraph 93 of the Complaint states legal conclusions and Plaintiff's
21 characterization of this action, to which no response is required. To the extent that
22 Paragraph 93 may be deemed to require a response and to the extent that the allegations in
23 Paragraph 93 are directed to Hynix, Hynix denies those allegations. Hynix specifically
24 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
25 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
26 information sufficient to form a belief as to the truth of all other allegations contained in
27 Paragraph 93, and on this basis denies those allegations.
28

1 ***Third Claim (Violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

2 94. To the extent that the allegations in Paragraph 94 of the Complaint are
3 directed to Hynix, Hynix denies those allegations and specifically denies that it violated
4 the Donnelly Act, N.Y. Gen. Bus. L. § 340 *et seq.* Hynix lacks knowledge or information
5 sufficient to form a belief as to the truth of all other allegations in Paragraph 94, and on
6 this basis denies those allegations.

7 95. To the extent that the allegations contained in Paragraph 95 of the
8 Complaint are directed to Hynix, Hynix denies those allegations and Hynix specifically
9 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
10 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
11 information sufficient to form a belief as to the truth of all other allegations in Paragraph
12 95, and on this basis denies those allegations.

13 96. To the extent that the allegations in Paragraph 96 of the Complaint and all
14 subparts are directed to Hynix, Hynix denies the allegations and Hynix specifically denies
15 that Plaintiff or any person or entity that Plaintiff purports to represent was injured by
16 Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
17 information sufficient to form a belief as to the truth of all other allegations in Paragraph
18 96, including all subparts, and on this basis denies those allegations.

19 97. To the extent that the allegations in Paragraph 97 of the Complaint are
20 directed to Hynix, Hynix denies those allegations and specifically denies that it violated
21 the Donnelly Act, N.Y. Gen. Bus. L. § 340 *et seq.* Hynix lacks knowledge or information
22 sufficient to form a belief as to the truth of all other allegations in Paragraph 97, and on
23 this basis denies those allegations.

24 98. To the extent that the allegations in Paragraph 98 of the Complaint are
25 directed to Hynix, Hynix denies the allegations and Hynix specifically denies that Plaintiff
26 or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or
27 that Plaintiff is entitled to any relief. Hynix lacks knowledge or information sufficient to
28

1 form a belief as to the truth of all other allegations in Paragraph 98, and on this basis
2 denies those allegations.

3 99. Paragraph 99 of the Complaint states legal conclusions and Plaintiff's
4 characterization of this action, to which no response is required. To the extent that
5 Paragraph 99 may be deemed to require a response and to the extent that the allegations in
6 Paragraph 99 are directed to Hynix, Hynix denies those allegations. Hynix specifically
7 denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured
8 by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or
9 information sufficient to form a belief as to the truth of all other allegations contained in
10 Paragraph 99, and on this basis denies those allegations.

11 100. Paragraph 100 of the Complaint states legal conclusions and Plaintiff's
12 characterization of this action, to which no response is required. To the extent that
13 Paragraph 100 may be deemed to require a response and to the extent that the allegations
14 in Paragraph 100 are directed to Hynix, Hynix denies those allegations. Hynix
15 specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent
16 was injured by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks
17 knowledge or information sufficient to form a belief as to the truth of all other allegations
18 contained in Paragraph 100, and on this basis denies those allegations.

19
20 ***Fourth Claim (N.Y. Exec. L. § 63 (12))***

21 101. To the extent that the allegations contained in Paragraph 101 of the
22 Complaint are directed to Hynix, Hynix denies those allegations. Hynix lacks knowledge
23 or information sufficient to form a belief as to the truth of all other allegations in
24 Paragraph 101, and on this basis denies those allegations.

25 102. To the extent that the allegations in Paragraph 102 of the Complaint are
26 directed to Hynix, Hynix denies those allegations and specifically denies that it violated
27 Section 1 of the Sherman Act, 15 U.S.C. § 1, the Donnelly Act, N.Y. Gen. Bus. L. § 340
28 *et seq.*, as well as state antitrust laws throughout the United States, and N.Y. Exec. L. §

63(12). Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in Paragraph 102, and on this basis denies those allegations.

103. Paragraph 103 of the Complaint states legal conclusions and Plaintiff's characterization of this action, to which no response is required. To the extent that Paragraph 103 may be deemed to require a response and to the extent that the allegations in Paragraph 103 are directed to Hynix, Hynix denies those allegations. Hynix specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff is entitled to any relief. Hynix lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 103, and on this basis denies those allegations.

104. Except where specifically admitted, Hynix denies each and every allegation in the Amended Complaint and Hynix specifically denies that Plaintiff or any person or entity that Plaintiff purports to represent was injured by Hynix or at all or that Plaintiff or any person or entity that Plaintiff purports to represent is entitled to any relief.

AFFIRMATIVE DEFENSES

Reserving its right to amend its Amended Answer to assert additional defenses as they may become known, and without assuming any burden that it would not otherwise bear, Defendant Hynix asserts the following separate and additional defenses:

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state claims or causes of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks standing to sue. Among the reasons Plaintiff and those on whose behalf Plaintiff purports to seek recovery do not have standing are: (i) the alleged injury is not the type addressed by the

1 laws under which Plaintiff brings its claims; (ii) the alleged injury is indirect and too
2 remote; (iii) more direct victims of the alleged injury exist and are pursuing claims;
3 (iv) the alleged damages are speculative; and (v) Plaintiff's damage claims create an
4 impermissible risk of duplicate recoveries and complex damage apportionment.

5 6 **THIRD AFFIRMATIVE DEFENSE**

7 To the extent the Amended Complaint asserts alleged violations on behalf of
8 indirect purchasers located outside of the State of New York, those claims are barred as
9 improper assertions of extraterritorial jurisdiction, and any effort to enforce those laws for
10 residents of other states would violate Defendant's right to due process under the
11 Constitutions of the United States and various states.

12 13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred, in whole or in part, because, under any applicable law,
15 Plaintiff and those on whose behalf Plaintiff purports to seek recovery have not suffered
16 any cognizable antitrust injury, including but not limited to (a) "injury in fact" and (b) any
17 injury proximately caused by any conduct of Hynix.

18 19 **FIFTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed both to allege fraudulent concealment with particularity and to
21 plead the elements of fraudulent concealment under the applicable law.

22 23 **SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred, in whole or part, because the Amended Complaint
25 fails to plead conspiracy with the particularity required under the applicable law.
26
27
28

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, because Plaintiff and those on
3 whose behalf Plaintiff purports to seek recovery have not suffered any cognizable
4 damages.

5
6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Plaintiff and those on whose behalf Plaintiff purports to seek recovery have failed
8 to mitigate damages, if any, and any recovery should be reduced or denied accordingly.

9
10 **NINTH AFFIRMATIVE DEFENSE**

11 To the extent that Hynix is found liable for damages—if any such damages there
12 were or are, the fact and extent of which are expressly denied by Hynix—those damages
13 must be reduced in proportion to Hynix's degree of fault.

14
15 **TENTH AFFIRMATIVE DEFENSE**

16 The relief sought by Plaintiff is barred, in whole or in part, because the alleged
17 damages sought are too speculative and uncertain, and because of the impossibility of
18 ascertaining and allocating the alleged damages.

19
20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred, in whole or in part, because an award of treble
22 damages against Hynix based on the conduct alleged in the Amended Complaint would
23 violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the
24 Constitution of the United States.

25
26 **TWELFTH AFFIRMATIVE DEFENSE**

27 There are other actions pending between the same Defendants and some of those
28 on whose behalf Plaintiff purports to seek recovery for the same causes of action in other

1 courts elsewhere in the United States. As a result, this case should be dismissed,
2 consolidated or stayed.

3
4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 To the extent there is a finding of an illegal overcharge, Plaintiff's claims are
6 barred, in whole or in part, to the extent that the overcharge was absorbed, in whole or in
7 part, by others, and was not passed through to Plaintiff or those on whose behalf Plaintiff
8 purports to seek recovery.

9
10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred, in whole or in part, because any recovery or relief
12 would unjustly enrich Plaintiff and those on whose behalf Plaintiff purports to seek
13 recovery.

14
15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, because the alleged conduct of
17 Hynix has not unreasonably restrained trade.

18
19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred, in whole or in part, because any actions taken by
21 Hynix did not lessen competition in a relevant market.

22
23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred, in whole or in part, because Hynix's conduct has been
25 reasonable, based upon independent, legitimate business and economic justifications,
26 without any purpose or intent to injure competition.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, because Hynix's actions were
3 taken in the pursuit of its own economic interests, not by wrongful means.

4
5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's causes of action are barred, in whole or in part, because any act or
7 omission by or on behalf of Hynix alleged in the Amended Complaint was undertaken in
8 good faith, was justified, constituted bona fide business competition, was undertaken in
9 pursuit of legitimate business interests, or is privileged.

10
11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred, in whole or in part, to the extent they are based on
13 alleged acts, conduct, or statements that are specifically permitted by law.

14
15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, because they are not based on
17 exclusionary conduct but rather are based on conduct that has the purpose or effect of
18 promoting, encouraging, or increasing competition.

19
20 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

21 This defense has been withdrawn.

22
23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff's alleged damages, if any, and the alleged damages, if any, of those on
25 whose behalf Plaintiff purports to seek recovery, resulted from the acts or omissions of
26 third parties and/or independent entities over whom Hynix had no control and were not
27 proximately caused by Hynix. The acts of such third parties constitute intervening or
28

1 superseding causes of the harm, if any, suffered by Plaintiff and those on whose behalf
2 Plaintiff purports to seek recovery.

3
4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 This defense has been withdrawn.

6
7 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, to the extent that any claimed
9 injury or damages have been offset by benefits received with respect to the challenged
10 conduct as a result of Plaintiff's settlements with other parties.

11
12 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred, in whole or in part, because the alleged conduct of
14 Hynix that is the subject of the Complaint either occurred outside of the jurisdiction of the
15 Court or was neither directed to nor affected persons, entities or commerce in the United
16 States or both.

17
18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 Hynix did not engage in any materially deceptive trade conduct with respect to the
20 Plaintiff and those on whose behalf Plaintiff purports to see recovery.

21
22 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

23 The claims of Plaintiff and those on whose behalf Plaintiff purports to seek
24 recovery are barred, in whole or in part, because Plaintiff and those on whose behalf
25 Plaintiff purports to seek recovery did not detrimentally rely on any alleged deceptive
26 trade conduct by Hynix.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the alleged conduct of Hynix that is the subject of the Amended Complaint either occurred outside of the jurisdiction of the Court or was neither directed to nor affected persons, entities or commerce in the United States or both.

THIRTIETH AFFIRMATIVE DEFENSE

To the extent Plaintiff purports to seek relief on behalf of those who have not suffered any damages, the Complaint and each of its claims for relief therein violate Hynix's rights to due process under the constitutions of various states and of the United States.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

THIRTY-SECOND AFFIRMATIVE DEFENSE

This defense has been withdrawn.

THIRTY-THIRD AFFIRMATIVE DEFENSE

This defense has been withdrawn.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims for equitable relief are barred because Plaintiff and those on whose behalf Plaintiff purports to seek relief have an adequate remedy at law.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for injunction insofar as it seeks to enjoin alleged events that have already transpired without the requisite showing of threatened future harm or continuing violation.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

As a matter of constitutional right and substantive due process, Hynix is entitled to contest, by jury trial, its liability for damages to any particular individual or entity on whose behalf Plaintiff purports to seek recovery, even if Plaintiff prevails on its claims.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Any award of treble damages, civil penalties, disgorgement of profits or restitution to Plaintiff and those on whose behalf Plaintiff purports to seek recovery as indirect purchasers would be duplicative and would violate the Excessive Fines and Due Processes Clauses of the United States Constitution.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent they would result in Hynix paying damages to more than one claimant for the same alleged overcharge, because such multiple recoveries would violate rights guaranteed to Hynix by the United States Constitution, including, without limitation, rights guaranteed under the Due Process Clause of the Fourteenth Amendment.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to 15 U.S.C. § 15b, New York General Business Law § 340(5) and New York CPLR § 214.

1 **FORTIETH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, because Plaintiff and those on
3 whose behalf Plaintiff purports to seek recovery do not have standing under the applicable
4 laws, including, but not limited to 15 U.S.C. § 1 and New York General Business Law
5 §§ 340 and 349 *et seq.*

6
7 **FORTY-FIRST AFFIRMATIVE DEFENSE**

8 Any award of restitution based upon asserted interests or injuries of the Plaintiff or
9 those on whose behalf Plaintiff purports to seek recovery would violate the Excessive
10 Fines Clause of the Eighth Amendment (as incorporated by the Due Process Clause of the
11 Fourteenth Amendment) to the United States Constitution and Article I, section 5 of the
12 New York Constitution.

13
14 **FORTY-SECOND AFFIRMATIVE DEFENSE**

15 Any finding of liability under New York General Business Law § 340 *et seq.* and
16 New York Executive Law § 63 would violate the Due Process Clause of the Fourteenth
17 Amendment to the United States Constitution and Article I, section 6 of the New York
18 Constitution because the standards of liability under these statutes are unduly vague and
19 subjective, permitting retroactive, random, arbitrary, and capricious punishment that
20 serves no legitimate governmental interest.

21
22 **FORTY-THIRD AFFIRMATIVE DEFENSE**

23 Any award of damages, civil penalties, disgorgement or restitution to the Plaintiff
24 or those on whose behalf Plaintiff purports to seek recovery under New York General
25 Business Law § 340 *et seq.* and/or New York Executive Law § 63 would constitute a
26 taking of property without just compensation in violation of the Taking Clause of the Fifth
27 Amendment to the United States Constitution (as incorporated by the Due Process Clause
28

1 of the Fourteenth Amendment to the United States Constitution) and Article I, section 7 of
2 the New York Constitution.

3
4 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

5 Any attempt to require Defendants to identify, locate or notify absent persons on
6 whose behalf this action is allegedly prosecuted would violate the Due Process Clause of
7 the Fourteenth Amendment to the United States Constitution.

8
9 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

10 Any award of restitution under New York General Business Law §340 *et seq.* to
11 persons who refuse to execute an acknowledgement that the payment is in full settlement
12 of claims against Defendants would violate the Due Process Clause of the Fourteenth
13 Amendment to the United States Constitution.

14
15 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

16 Plaintiff's causes of action with respect to New York General Business Law §340
17 *et seq.* are barred, in whole or in part, because the application of section 16700 *et seq.* to
18 wholly interstate or foreign commerce violates the Commerce Clause of the United States
19 Constitution.

20
21 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

22 Any award of treble damages, civil penalties, disgorgement or restitution pursuant
23 to New York General Business Law §340 *et seq.* would violate the Excessive Fines and
24 Due Processes Clauses of the United States Constitution and equivalent clauses in the
25 California Constitution.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims under New York General Business Law § 340 *et seq.* are barred, in whole or in part, because any alleged conduct by Hynix is, or if in interstate commerce would be, subject to and compliant with the rules and regulations of, and the statutes administered by, the Federal Trade Commission or other official department, division, commission or agency of the United States, as these rules, regulations, or statutes are interpreted by the Federal Trade Commission or such department, division, commission or agency of the federal courts. N.Y. G.B.L. § 349(d).

FORTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims under New York law and other applicable laws are barred by the voluntary-payment doctrine, under which one cannot recover payments with full knowledge of the facts. As Plaintiff has alleged, investigation into the alleged conduct of defendants began in June 2002. Additionally, lawsuits against defendants began as early as July 2002. Notwithstanding these facts, Plaintiff has alleged that it and those who it purports to represent continued to purchase DRAM and/or DRAM-containing products through December 2002 that were allegedly affected by the defendants' alleged conduct.

FIFTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to properly notify or obtain consent from the entities the Plaintiff purports to represent in this lawsuit, as required under statute or case law.

FIFTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims by assignment are barred, in whole or in part, because such claims cannot be assigned or were not properly assigned.

FIFTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims pursuant to the assignment clauses in the "Centralized Contract" are barred, in whole or in part, because Hynix has already resolved any such claims with the direct purchaser OEMs and has been released from any further liability for any such claims, and recovery for such claims therefore would be duplicative and would violate the Excessive Fines and Due Processes Clauses of the United States Constitution.

FIFTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff does not have the right to bring a suit on behalf of certain entities Plaintiff purports to represent in this lawsuit.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not met the prerequisites for a viable claim.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

Hynix avers, without admitting the existence of any contract, combination, or conspiracy in restraint of trade, that Hynix is entitled to set off any amounts paid to Plaintiff by any other Defendants who have settled, or do settle, Plaintiff's claims against them in this matter.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

Hynix hereby adopts and incorporates by reference any additional defenses asserted by the other Defendants in this proceeding insofar as those defenses may properly be asserted by Hynix.

1 Hynix reserves the right to amend this Amended Answer in order to add any
2 additional affirmative defenses that may become necessary under the statutes or other
3 applicable law of the State of New York.

4 **WHEREFORE**, HYNIX prays for the following relief:

5 a. That Plaintiff the State of New York's Amended Complaint be dismissed
6 with prejudice;

7 b. That Plaintiff the State of New York on behalf of itself and all entities that
8 the State of New York purports to represent take nothing by way of the Amended
9 Complaint;

10 c. That Judgment be entered in favor of Hynix and against the State of New
11 York on its own behalf on behalf of all entities the State of New York purports to
12 represent;

13 d. That Hynix be awarded costs and, if applicable, attorneys' fees; and

14 e. For such further or other relief as the Court deems proper.

15 Dated: February 4, 2009

O'MELVENY & MYERS LLP
KENNETH R. O'ROURKE
MICHAEL F. TUBACH
STEVEN H. BERGMAN
KATHERINE M. ROBISON

19 By: /Steven H. Bergman/
20 Steven H. Bergman

21 Attorneys for Defendants
22 HYNIX SEMICONDUCTOR INC. and
23 HYNIX SEMICONDUCTOR AMERICA INC.
24
25
26
27
28

JURY DEMAND

Pursuant to the provisions of Rule 38, Federal Rules of Civil Procedure, Hynix Semiconductor Inc. and Hynix Semiconductor America Inc. hereby respectfully demand trial by jury.

Dated: February 4, 2009

O'MELVENY & MYERS LLP
KENNETH R. O'ROURKE
MICHAEL F. TUBACH
STEVEN H. BERGMAN
KATHERINE M. ROBISON

By: /Steven H. Bergman/
Steven H. Bergman

Attorneys for Defendants
HYNIX SEMICONDUCTOR INC. and
HYNIX SEMICONDUCTOR AMERICA INC.